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quiring at least writing for the validity of contracts. This rule was evidently in accord with mercantile practice for it has formed part of the law ever since. Section 1341 of the French Civil Code is typical of the general continental law, which almost entirely excludes proof by witnesses. It would seem as if the English statute of frauds passed in 1676 was part of the general movement for security in formless agreements. But the English judges seem to have been afraid of the statute and have interpreted it so as to make as little change in the law as possible, although with just as much plausibility the French Ordinance of Moulin, 1566, could have been interpreted as a rule of evidence or procedure.⁵

A. M. K.

Statute of Limitations: Is Action by the Husband for Loss of Consortium a Property Right?—At common law two actions will lie for personal injury to a married woman, one of trespass *vi et armis* by the husband and wife jointly, the other, where the injury is such that the husband is deprived of the consortium of the wife, an action of trespass upon the case, *per quod consortium amisit*.¹ Blackstone explains the husband's right of action as being founded on a property right in the society and services of the wife.²

The principle has been recognized in modern cases, especially in explaining the right of the wife to sue for alienation of her husband's affections, that the reciprocal rights of the husband and wife may be regarded as the property of the respective parties, in the broad sense of the word property, which includes things not tangible or visible, and applies to whatever is exclusively one's own.³ So far as the husband is concerned, from time immemorial the law has regarded his right to the consortium of his wife as valuable property, and has compelled one who has injured it to make compensation.⁴ This common law right of the husband to recover for the loss of consortium has not been destroyed by statutes giving married women control over their time and actions.⁵ The wife's services in the household and in discharge of her domestic duties still belong to the husband, and in so far as she is injured so as to be disabled to perform such services, the loss is his, and he can recover.⁶

In the principal case,⁷ an action by the husband for the loss of the wife's services and for medical expenses caused by injury to the wife,

⁵ French Civil Code (Annotated) by Blackwood Wright. Brissaud, History of French Private Law, Continental Legal History Series, section 378.

¹ 3 Bl. Com. 140.

² 3 Bl. Com. 143.

³ Jaynes v. Jaynes, (1886) 39 Hun 40, 41.

⁴ Jaynes v. Jaynes, (1886) 39 Hun 40, 41; Bennett v. Bennett, (1889) 116 N. Y. 584; 6 L. R. A. 553, 554 (note).

⁵ Foot v. Card, (1889) 58 Conn. 1, 8, 6 L. R. A. 829, 831.

⁶ Kelley v. N. Y. etc., R. Co., (1897) 168 Mass. 308, 38 L. R. A. 631.

⁶ City of Wyandotte v. Agan, (1887) 37 Kan. 528, 15 Pac. 529.

⁷ Basler v. Sac. Ry. Co., (1913) 46 Cal. Dec. 142, 134 Pac. 993.

through the negligence of the defendant, it was held that the husband's right of action was based on an injury to the person, and hence governed by the period of limitation prescribed by subdivision 3 of Section 340 of the Code of Civil Procedure. The language of the Code, "injury to, or death of, one caused by the wrongful act or negligence of another," was held to be broad enough to include the consequential injuries to the husband resulting from the injury to the wife. In arriving at this conclusion, the court followed certain New York cases.⁸

It has been suggested that the husband's right to damages in such a case is compound, and consists of diverse elements.⁹ It is made up of a right to damages for the loss of the society and comfort, for loss of services, and for such expense as may accrue to him by reason of the injury. It seems on principle, as well as on common law precedent, that such right of action is founded on the injury to the property rights of the husband. For instance, if the husband dies while his action for the loss of the wife's consortium is pending, it has been held that the right of action survives and vests in the administrators in so far as it rests upon a pecuniary loss to the estate of the husband.¹⁰

But while thus analyzed, the right of the husband to sue for the pecuniary loss caused by the wife's injury seems to be a property right, it does not necessarily follow that the decision in the principal case is wrong. The truth is that the sections of the Code of Civil Procedure dealing with the subject of the limitation of actions do not differentiate strictly between injuries to the person and injuries to property. It would be difficult to point to any section of the California statute of limitations which would include an injury to a property right of this kind. On the other hand, the language of subdivision 3 of section 340 of the Code of Civil Procedure, referred to by the Court, is broad enough to embrace the present cause of action. There is, therefore, no reasonable basis upon which to find fault with the Court's conclusion.

A. A.

Statute of Limitations: Marriage as a Disability: Right of Wife to sue alone for Personal Injuries.—Though the statute of limitations for personal actions in this State has always made an exception in favor of persons under disability, among whom it has mentioned married women, when their husbands are necessary parties plaintiff, the appellate courts seem not to have been called upon to refer to the portion of section 352 of the Code of Civil Procedure making this exception until the case of *Moody v. Southern Pacific Company*.¹

⁸ *Maxson v. Dela. etc. R. Co.*, (1889) 112 N. Y. 560. (It should be noted that this decision turns upon the peculiar language of the New York Statute).

⁹ *Maxson v. Dela. etc. R. Co.*, *supra*, 563.

¹⁰ *Cregin v. Brooklyn etc. Ry.*, (1880) 83 N. Y. 595, followed in *Foels v. Tonawanda*, (1892) 65 Hun 624, 20 N. Y. Sup. 447.

¹ (November 18, 1913) 17 Cal. App. Dec. 593.